

DAILY BULLETIN

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U.S. WINS WTO CASE AGAINST EU OVER GEOGRAPHICAL FOOD NAMES

EU registry discriminates against non-EU products, panel rules

The United States has won a case in the World Trade Organization (WTO) against the European Union (EU) system for protecting certain geographical food names -- called geographical indications, or GIs -- as trademarks.

According to a December 21 press release from the Office of the U.S. Trade Representative (USTR), a WTO dispute-settlement panel in Geneva has ruled that the EU GI registry violates the WTO intellectual property rights agreement (TRIPs) because it discriminates against non-EU products.

A U.S. trade official, who spoke on condition of anonymity, said in a teleconference with reporters that the EU would have to change its system to let U.S. and other non-EU producers submit applications for GI protection to the EU registry.

At issue was national treatment, the WTO principle of giving others the same treatment as one's own nationals. As the EU already protects products such as Parma ham and Roquefort cheese, USTR said, now it would have to offer the same sort of protection for U.S. GIs such as Florida oranges, Idaho potatoes and Vidalia onions.

In a second aspect of the case, USTR said, the WTO panel ruled that the EU registry could protect GI

names only as registered and not foreign language translations of the registered name.

U.S. brewer Anheuser-Busch issued a statement asserting that the ruling prevents a rival Czech brewer from using the name Budweiser along with its registered name Budvar (Budweiser is the German for the Czech place name Budvar).

“This is a big win for American farmers and food processors,” U.S. Trade Representative Robert Zoellick said. “We brought this case because we believed that, under WTO rules, U.S. farmers, ranchers and other food producers should have the same access to protection for ‘geographical indications’ as European food producers.”

The EU could appeal the panel ruling after it is circulated among all WTO members, probably in March.

On another issue, the unidentified trade official said the United States would appeal a different WTO panel ruling, this one against U.S. countervailing duties imposed on imports from the South Korean semiconductor producer Hynix to counter alleged subsidies.

The panel reportedly found that the United States had not presented sufficient evidence to demonstrate that the Korean government had ordered Korean banks to provide Hynix subsidized loans.

Following is the text of the press release:

Office of the United States Trade Representative
Washington, D.C. 20508

United States Wins WTO Case Against EU Over Food Names

WASHINGTON -- United States Trade Representative Robert B. Zoellick announced today that the United States had prevailed in its WTO case against the European Union regarding geographic food names known as “geographical indications.” Geographical indications, or “GIs,” are geographic names that have a particular association with a product, such as Idaho potatoes or Florida oranges.

In its report issued today, the WTO panel agreed with the United States that Europe’s regulation discriminates against U.S. products and producers and is therefore contrary to WTO rules. The panel also agreed with the United States that Europe could not, consistent with

WTO rules, deny U.S. trademark owners their rights. The panel emphasized that any exceptions to trademark rights for the use of registered GIs were narrow and limited to the actual GI name as registered.

“This is a big win for American farmers and food processors. We brought this case because we believed that, under WTO rules, U.S. farmers, ranchers, and other food producers should have the same access to protection for ‘geographical indications’ as European food producers. Europe clearly failed to provide this access,” said Zoellick. “We also welcome the panel’s findings that protecting GIs need not and should not harm the rights of trademark owners. These findings are important to the rights of U.S. companies protecting their trademarks in Europe.”

Zoellick noted the interest in this case by the House [of Representatives] Agriculture Chairman Bob Goodlatte (R-VA) and worked closely with him and his staff on this issue. Under WTO rules, both parties will have an opportunity to appeal the panel report to the WTO Appellate Body after the report is circulated to the WTO membership and the public, probably sometime in the next few months.

Background

Protection of Geographical Indications

“Geographical indications” (GIs) indicate the geographic origin of a product, where the product has some attribute or reputation associated with that origin. Examples could include Parma ham, Roquefort cheese, Florida oranges, Vidalia onions, or Idaho potatoes. The WTO TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) defines GIs as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographic origin.”

“Protection” of GIs can take many forms, but generally consists of ensuring that consumers are not misled as to the geographic origin of the good.

The United States has a robust system for protecting geographical indications, primarily through rights provided to private rightholders under the U.S. trademark system. This system gives access to GI protection on a non-discriminatory basis and in a manner that fully protects the rights of trademark owners.

By contrast, the EC [European Community] has a special regulatory regime for geographical indications, separate and apart from its trademark system, which depends in significant part on government intervention. It is this GI regime that the United States challenged in this dispute.

Separate from this dispute, there are on-going discussions in the context of the Doha round of WTO negotiations. The EC has advocated expanding GI obligations under the TRIPS Agreement. This panel has found, however, that the EC has not complied with its current TRIPS obligations. From the U.S. perspective, current TRIPS Agreement obligations are sufficient, and a priority should be placed instead on Members meeting current obligations.

Claims

At issue is an EU regulation on the protection of GIs for agricultural products and foodstuffs (but not including wine or spirits, which are subject to a separate regulatory system). The United States challenged the EU GI Regulation on two primary grounds: (1) discrimination against U.S. GIs (national treatment) and (2) failure to protect U.S. trademarks.

First, with respect to national treatment, although the EU GI Regulation creates a system for the EU-wide registration and protection of GIs, the United States was concerned that the Regulation imposed significant barriers to registration and protection for non-EU persons and non-EU products. Under the EU system of protection, companies are prohibited from using words in connection with their products that even “evoke” the name of a registered GI, unless they are one of the authorized users of the GI. The U.S. concern was that, for instance, while producers of Parma ham in Italy can stop others from using the name Parma or similar names in the EU market, the GI Regulation would not permit U.S. producers to do the same with respect to their products. The United States alleged that this aspect of the GI Regulation was inconsistent with the EU’s national treatment obligations under the TRIPS Agreement (with respect to protection of intellectual property rights of non-EU nationals) and under the GATT 1994 (with respect to treatment of non-EU goods).

Second, the United States was concerned that the EU GI Regulation would not permit trademark owners to enforce their trademarks -- that is, they would not be able to stop the confusing uses of similar GIs, which is one of their rights under the WTO TRIPS Agreement. The spe-

cific concern was the use of linguistic variations of GIs, where those linguistic variations are confusingly similar to European trademarks of U.S. companies and are used to market the European GI product, causing consumer confusion. The panel agreed with the United States that this would present concerns under the TRIPS Agreement, and found that the GI Regulation could only protect GI names as registered, and not linguistic variations of the GIs. This is an important principle for U.S. trademark owners. With this understanding, the panel found this aspect of the GI Regulation to be consistent with the TRIPS Agreement.

Procedural history

The United States requested WTO dispute consultations on the EU GI Regulation in June 1999. On August 18, 2003, the United States requested the establishment of a panel, and panelists were appointed on February 23, 2004. The panel issued a confidential draft interim report on November 19, 2004, the results of which were widely reported in the Press.

POST-9/11 VISA SYSTEM FAIRER, MORE EFFICIENT, MORE PREDICTABLE

System reviewed, improved in wake of terrorist attacks, U.S. official says

By Charlene Porter

Washington File Staff Writer

Washington -- Significant scrutiny was applied to the U.S. visa system after the terrorist attacks of September 11, 2001, when investigations revealed that some hijackers had entered the country legally. After listening to the critics and analyzing the problems, the U.S. government has created a system that is better, faster and more efficient than ever before, according to an official in the State Department’s Bureau of Consular Affairs.

“We want to have the most efficient, transparent and predictable system that we can,” said Deputy Assistant Secretary for Consular Affairs Janice Jacobs in an interview with the Washington File.

Jacobs remembers the difficult days after the 9/11 attacks, when the visa function carried out by the State

Department underwent review and revision to deal with the new security realities. Over time, U.S. agencies involved in border security developed improved measures for a new era, Jacobs said. New clearances for visa approval were introduced, new information technologies were built into the system, more personnel were applied to the tasks, and new efforts were made to improve the cooperation and communication between the various government agencies involved in a policy that Secretary of State Colin Powell has summed up with the words, "secure borders, open doors."

The new procedures require that more applicants undergo personal interviews before receiving a visa to enter the United States than pre-9/11 procedures. The driving force behind this change was a congressional requirement that visas issued by the State Department include biometric identifiers no later than October 26. By October 7, all 207 posts handling visa matters were collecting two fingerscans and a digital photo from each applicant, Jacobs said, a process that adds seconds to the visa interview. Once the interview takes place, 97 percent of applicants will learn within a day or two whether the visa is approved, Jacobs said.

There might be some differences in how rapidly an applicant can receive an appointment for a visa interview at a U.S. embassy or consulate compared to before 9/11, Jacobs said, but the Bureau of Consular Affairs is attempting to make that part of the process transparent by posting predicted waiting times for each embassy. The Consular Affairs Web site, <http://travel.state.gov/>, has become more user-friendly, she said, and provides applicants with information they need to know about applying for a visa.

This includes "what to expect in the interview, what documents you need to bring in, what you need to qualify," she said.

Fewer than 3 percent of visa applicants encounter a lengthier process with additional security reviews that must be conducted in Washington, Jacobs said. Such applicants might include those engaged in certain scientific fields who use technologies with dual uses or of national-security concern.

Revamping the Washington-based security review clearance system after the terrorist attacks was a difficult process, Jacobs said, resulting in months-long delays for some applicants. That problem led to significant

complaints from the U.S. research and academic communities in 2002 and 2003, Jacobs said, but government agencies responded by making significant improvements to the process.

"Last year at this time, it was taking 75 days on average to process the cases; we're down to 20 days today," Jacobs said. "So we've made considerable progress."

During that period of long delays, Jacobs heard the call for predictability in the visa system, and that has been restored, she said. "That's what we've been able to do in the last few months is to get that predictability back," she said. "People know that within 30 days or less they are going to get an answer one way or the other."

All U.S. embassies and consulates have been directed to give priority processing to students or other travelers involved in academic and professional exchanges in order to ensure that they will be able to arrive in the United States in adequate time to begin their programs.

The State Department has increased the number of personnel working on visa-processing functions, and Jacobs said recruits are being trained to recognize the importance of the task and to treat every applicant with dignity and fairness. She also reminds employees in this work that they are the "public face" of their government and their country.

"The impression that you give," Jacobs tells recruits, "will be the impression that someone has of the country, the government, the State Department and [other] Americans."

IRAQI ENTREPRENEURS OPTIMISTIC ABOUT BUSINESS PROSPECTS

Zogby poll surveys 454 business people in Baghdad, Irbil, Hilla

By Phillip Kurata
Washington File Staff Writer

Washington -- In what is billed as the first scientific poll of Iraq's business community, an international polling organization reports broad optimism about the economic prospects for Iraq among small and medium-size business owners and managers.

A survey of 454 owners and managers was commissioned by the Center for International Private Enterprise (CIPE), a branch of the U.S. Chamber of Commerce, and conducted by Zogby International from October 17 to December 3. The owners and managers surveyed ran businesses that employed 100 people or fewer. In Baghdad, 264 interviews were conducted; 90 in the northern, predominantly Kurdish city of Irbil; and 100 in the mostly Shi'a city of Hilla, south of Baghdad.

The survey's findings report "seven in ten (69 percent) of Iraqi business leaders hold an optimistic outlook toward their country's future post-Saddam, while just one in ten (10 percent) is pessimistic. These percentages hold up across the nation, though optimism jumps to eight in ten (81 percent) in Hilla."

Hala Kotb, director of International Marketing and Communications of Zogby International, said the level of confidence is remarkable, considering that the poll was conducted during the battle for Fallujah, where coalition and Interim Iraqi Government forces engaged insurgents in heavy combat.

"It's just so incredible with all that's happened. This survey was done from October 17 to December 3, through Fallujah, through all the bombings, and to see this level of optimism is actually very good," she said.

By more than a two to one margin, Iraqi businesspeople anticipate employment will increase nationally in the next six months, according to the survey: 32 percent said they have hired new employees since the removal of the Ba'athist regime; 24 percent said they are planning on hiring in the next six months.

John Zogby, president of Zogby International, said, "this is extremely encouraging. This is a call to not only the United States but a call to the world that says, 'hey, look, Iraq traditionally has had a very successful business climate. Historically, it has had the most developed middle class and business class of anywhere in the Arab world, and here is one area where the United States and the rest of the world can play an extremely positive role in facilitating development.'"

While four out of 10 small businesses employ women, the survey found that women do not have the same opportunities as men to start or run businesses or find professional jobs. It found few women occupying managerial positions.

"Another area that we're working on, which obviously is going to be a major thrust for several years, is improving the role of women in business. There are severe barriers to women entering into firms. The security situation of course makes it more difficult for women in particular but the access to credit, access to business opportunities and access to jobs that lead you into a business career were among the constraints that were listed," CIPE President John Sullivan said.

No political party has won strong support in the business community, the survey said. It said that more than seven out of 10 businesspeople surveyed indicated they had not decided for which party they would vote in the January 30, 2005, parliamentary elections. The al Dawa party drew the most support, 10 percent, with its popularity spread evenly over the country. The Supreme Council for Islamic Revolution in Iraq was the party of choice for 7 percent of the respondents, but its support was unevenly distributed over the country. The Kurdish parties, the Patriotic Union of Kurdistan and the Kurdish Democratic Party, dominated in northern Iraq but have little support in other areas of the country.

"The political parties have not had the chance or haven't taken the chance yet to reach and cultivate a constituency in the private entrepreneurial sector. If I were an Iraqi political leader, and I saw those numbers, I would say that there is a big constituency that has not lined up behind somebody yet," Sullivan said.

More than two-thirds of the respondents have a positive view of the interim government, saying that its new laws will help their businesses. But most of the businesspeople said that information on commercial laws is not clear or widely available and that the government contracting process is not transparent.

"Obviously, the creation of a parliament, whenever that happens, will be a major step forward for the business community to have a partner to dialogue with. The program that we're doing in Iraq is designed to try to meet some of these needs, to strengthen the network of associations to act as a voice for the business community," Sullivan said.

The respondents said that their greatest business needs, after security, were for English language training and computers. They said that they saw their greatest opportunities for foreign business with the United Arab Emirates (30 percent), European companies (17 percent), and Lebanon (11 percent), followed by the United States, Jor-

dan and Egypt. Among the respondents, 86 percent said that foreign investment in Iraq would improve business, while 3 percent said it would have the opposite effect.

“What we’re seeing is the rebirth of an Iraqi business community that is seeing opportunity. They’re seeing the numbers change, and their expectations are that the interim government and the government that will be elected soon will put into place the kind of commercial law and regulatory environment and banking system” that will help business, Sullivan said.

The results of the survey, released December 15, can be found at the Web site http://www.cipe.org/CIPE_Zogby_Iraq_survey.pdf

WHITE HOUSE REPORT, DECEMBER 21: RUSSIA, DETAINEES, TURKEY

Bush administration “disappointed” over Russia’s auction of oil subsidiary

- Yukos Sale Could Chill Investment in Russia

The Bush administration expressed its disappointment over Russia’s decision to auction off the main oil production subsidiary of Yukos, Russia’s second-largest oil company, on December 19, saying the action could have a “chilling effect” on foreign investment in Russia, as well as the country’s role in the global economy.

“We are disappointed that Russia went ahead with the auction of the Yukos subsidiary,” White House Press Secretary Scott McClellan said December 21.

“We had hoped for a solution that would allow for the legitimate enforcement of tax laws but avoid harming investors, especially American investors,” he said.

According to press reports, there are concerns that the sale of the main oil subsidiary of Yukos is a move designed to help the Russian government gain more control over the country’s energy industry.

The Bush administration believes Russia has a responsibility to seek greater integration into the world economy, McClellan said, and to “create an environment governed

by the protection of property rights and the rule of law and to restore confidence in its political, legal and judicial institutions.”

Russia should “ensure a stable, predictable and transparent environment” for international investors, he said, and the sale of the Yukos subsidiary “could have a chilling effect on the foreign investment in Russia and affect its role in the global economy.”

The press secretary said President Bush and Russian President Vladimir Putin will meet in Bratislava, Slovakia, February 24, 2005, but he did not confirm that Yukos would be on the agenda of their meeting.

However, McClellan said the leaders would discuss Russian access to U.S. nuclear storage facilities, saying, “The prevention of the proliferation of nuclear material is one of our top security priorities.”

Presidents Bush and Putin, he said, can discuss ways of building upon previous cooperation in that area, and he said access to U.S. storage sites will allow Russia “to see how we address some of those issues ... and ways to improve some of that cooperation.”

- Bush Authorization of Interrogation Methods Denied

Press Secretary McClellan denied that President Bush signed an executive order that sanctioned interrogation methods to be used against detainees in the War on Terror.

According to press reports, the American Civil Liberties Union released the text of a May 22 e-mail from the FBI that suggested that Bush had approved “inhumane” interrogation methods.

“The e-mail was wrong,” McClellan said. “There is no executive order relating to interrogation techniques. When it comes to military detainees and interrogation methods, those are determinations made by the Department of Defense.”

McClellan said the Bush administration is aware of allegations of abuse that are being made available to the press. He said the United States is “a nation of laws and a nation of values and we adhere to our laws and values.”

“The president expects that any allegations of abuse are taken seriously and fully investigated, and that corrective

measures are taken to make sure that abuse does not occur again,” McClellan said.

The press secretary said the Defense Department is currently investigating several allegations of abuse. “They take this issue seriously and that’s what we expect them to do. We expect them to get to the bottom of it and to take appropriate measures,” he said.

- Bush, Turkish Prime Minister Discuss EU Accession, Iraq

President Bush telephoned Turkish Prime Minister Recep Tayyip Erdogan to express his congratulations over the European Council’s December 17 decision to open European Union accession talks with Turkey October 3, 2005.

Press Secretary McClellan said the two leaders “agreed that the EU’s decision should help strengthen Turkey’s relations with both Europe and the United States.”

McClellan also said Bush and Erdogan discussed Iraq, including the need for increased security cooperation between United States, Turkey and Iraq, and the importance of moving forward with Iraqi elections, scheduled for January 30, 2005.